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MEMORANDUM FOR THE RECORD

SUBJECT: Office of Government Ethics - Senate Reauthorization Hearings

1. On 12 and 13 April 1988, the Oversight of Government Management Subcommittee, Senate Governmental Affairs Committee held hearings on the reauthorization of the Ethics In Government Act and the Office of Government Ethics (OGE).

2. 12 April. The first day was an overview of the Act and the recent history of ethics-in-government issues with various witnesses including: Archibald Cox; Lloyd Cutler and John Keeney, Criminal Division, Department of Justice. There was also a panel of individuals including: Michael Josephson, Marshall Breger, James Carroll, and Robert Roberts.

3. Messrs. Cox and Cutler were generally supportive of the Act and the supporting structure.

4. Mr. Keeney was questioned about prosecutions of ethics cases by the Department of Justice. Subcommittee Chairman Levin took issue with Keeney on Keeney's decision that ethics cases which did not have "jury appeal" should be not prosecuted.

5. Levin raised the problem that a declination of prosecution is often used to block civil/administrative ethics proceedings. Keeney did not share Levin's concern.

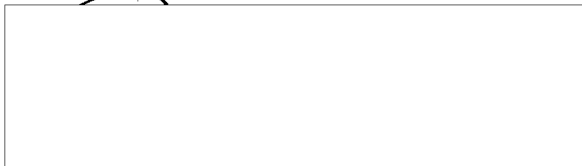
6. Keeney opined that the existing legislation was generally sufficient except for a proposal for adding members of Congress to the group covered.

7. 13 April. On 13 April 1988, the hearing continued with the principal witness being Judge Frank Nebeker, Director, OGE. Witnesses' statements are attached. The hearing was chaired by Senator Levin with Senator Cohen also present. Senator Levin asked the Judge to provide by the end of the next week any statutory language the Judge wished the Subcommittee to

include in the authorization bill it would introduce. They also discussed the issue of how OGE can conduct an investigation without interfering with a parallel investigation by an independent counsel or the Department of Justice.

8. Other Witnesses. The witnesses from the General Accounting Office did not add much of substance to the hearing. A former OGE director recommended that the financial disclosure statement forms be made simpler. He also suggested that OGE be made an independent agency. Representative Schroeder has introduced a bill, H.R. 4319, to do this.

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Attachments

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STAT

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m. EDT
April 13, 1988

STATEMENT OF
FRANK Q. NEBEKER
DIRECTOR
OFFICE OF GOVERNMENT ETHICS
BEFORE
THE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
OF
THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
ON
THE REAUTHORIZATION OF THE OFFICE OF GOVERNMENT ETHICS
APRIL 13, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate your invitation to appear before this Subcommittee to present the views of the Office of Government Ethics (OGE) on the reauthorization of this Office beyond its present expiration date of September 30, 1988.

I want to express my support for legislation to extend the authorization of appropriations for the Office of Government Ethics for six years. We are asking for reauthorization for six years so that the expiration will fall in a year that is neither a Presidential election year nor the year following such an election. I suggest this because the staff is small in comparison to the transition duties. During the present reauthorization process, a significant portion of our resources must be diverted from our other responsibilities to prepare materials requested for the reauthorization decision. If that process continues into the Fall, we will be facing a transition year in which we must process hundreds of financial disclosure reports for Presidential nominees as well as the termination financial disclosure reports for those leaving at the end of an administration. The transition task must be done in major part over a very short period of time to enable nominees to assume their positions as soon after the President's inauguration in January 1989 as possible. The Office will once again have to forego many of its other responsibilities until we have completed that process. I plan to request temporary transfer of knowledgeable people from other agencies to keep the impact of transition to a minimum. If the reauthorization and transition processes can be separated, OGE will be able more effectively and consistently to perform the responsibilities Congress assigned to it.

In your letter requesting me to testify, you asked me to discuss the operation of the Office and any changes in the underlying statute that I would recommend. Much of what

you have asked me to address was made a part of my letter to you of April 4, 1988, in which I responded to your questions regarding the programs and activities of this Office. While I will touch briefly on the contents of the letter's discussion of changes to the Act, I would like to provide the Subcommittee with a brief explanation of OGE's functions, followed by an overview of what the Office has accomplished since its first reauthorization in 1983.

Title IV of the Ethics in Government Act of 1978 (hereinafter the Act) established the Office of Government Ethics to provide overall direction of executive branch policies related to preventing conflicts of interest. The Act originally provided that the head of the Office, the Director, would be an advice and consent Presidential appointee serving at the pleasure of the President. As a result of the 1983 reauthorization hearings, the Act was amended to provide for a five-year term for the Director. My appointment in December, 1987 was the first made pursuant to that provision.

While OGE serves as the major policy maker, primary responsibility for administration of all "ethics in government" programs within an agency rests with the head of the agency. Each agency has a designated agency ethics official (DAEO). That officer or employee is designated by the head of the agency to administer within that agency the provisions of Title II of the Act (pertaining to the public financial disclosure requirements for the executive branch), to coordinate and manage the agency's ethics program, and to provide liaison with OGE with regard to all aspects of the agency's ethics program.

OGE establishes policy, coordinates agency training and counseling activities, monitors agency compliance with program requirements, and issues interpretive advisory opinions with respect to:

- executive branch personnel financial disclosure requirements;
- confidential financial disclosure requirements;
- "revolving door" or post-employment conflicts of interest;
- all other criminal conflict of interest restrictions found in 18 U.S.C. §§ 202-209;
- executive branch employee responsibilities and standards of conduct.

The responsibilities within the Office are shared by the Chief Counsel and a staff of seven attorneys, and the Deputy Director, who, in addition to his major role, oversees the Monitoring and Compliance Division staff of nine management analysts. Including support staff, OGE is currently authorized 30 positions. At this time, the Office is operating with a staff of 27 persons.

The Act also established OGE's role in the Presidential appointment process. With respect to every Presidential nominee requiring Senate confirmation, the Director of OGE must transmit the nominee's public financial disclosure report to the Chairman of the Senate committee of confirmation. With the report, the Director must submit an opinion letter confirming the nominee's compliance with all applicable laws and regulations. The Senate committees generally regard receipt of OGE's opinion letter as a prerequisite to scheduling a confirmation hearing.

OGE's Legal staff assists in drafting regulations and establishing policies on various executive branch ethics matters. OGE's most recent regulatory activity involves the executive branch's confidential financial disclosure system. In response to concerns that

the confidential financial disclosure system had been superseded by the public disclosure system of the Act, Congress amended § 207(a) of the Act in 1985 to give the President authority to require any officer or employee in the executive branch to submit a confidential financial disclosure report. Executive Order 11222 of May 8, 1965, as amended by Executive Order 12565 of September 25, 1986, provides for such a disclosure system. Section 1 of Executive Order 12565 gives OGE responsibility for administering the confidential reporting system. OGE has published proposed regulations establishing a system for agencies to follow and is in the process of completing the final regulations for publication.

Another responsibility of the Legal staff is to provide advice on executive branch ethics issues. This is done through written advisory opinions issued by the Director and informal advisory letters, as well as through more informal responses to telephone inquiries. Requests for advice come from agency ethics officials, employees, and private companies or firms or their counsel. To keep the agencies and the public informed concerning OGE's interpretations of the various ethics laws and regulations, OGE circulates a digest of its informal advisory letters to the agencies and other interested persons. The Office is in the process of preparing the full texts of the informal advisory letters for printing so that they will be available to the public through the Government Printing Office. In addition, the attorneys review the public financial disclosure reports of Presidential nominees prior to Senate consideration and draft the opinion letters accompanying the copies of the reports which are sent to the confirming committees. As necessary, the attorneys consult with the agency ethics officials or the appointees to bring the appointees and their reports into compliance with applicable federal conflict of interest laws and regulations. In this way, actual or potential conflicts of interest are identified and avoided through means ranging from divestment to recusal on specified issues.

As provided in Title IV of the Act, OGE's responsibilities include "monitoring and investigating compliance with the public financial disclosure requirements of Title II" of the Act and "monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch." To carry out these responsibilities, the management analysts in the Monitoring and Compliance Division conduct audits of the agencies' ethics programs, according to an annual program plan. The plan necessarily provides for a coverage of a few agencies in any one year. The statistics on the number of audit reports issued and the number of regional audits performed since OGE's first reauthorization in 1983 are as follows:

	<u>Audit Reports Issued</u>	<u>Regional Audits</u>
CY 1983	15	2
CY 1984	17	4
CY 1985	22	11
CY 1986	22	8
CY 1987	16	5

The Monitoring and Compliance staff also reviews the annual and termination public financial disclosure reports filed by Presidential appointees each year. The staff works closely with agency ethics officials to ensure that the reports are accurate and

complete. The statistics on the number of public financial disclosure reports reviewed each year since the 1983 reauthorization are as follows:

Public Financial Disclosure Reports

	<u>New</u>	<u>Annual</u>	<u>Termination</u>	<u>Total</u>
CY 1983	242	727	94	1063
CY 1984	180	762	57	999
CY 1985	292	881	125	1298
CY 1986	305	756	101	1162
CY 1987	299	653	135	1087

Among the responsibilities of the Director of OGE enumerated in Title IV of the Act is that of providing information on, and promoting understanding of, ethical standards in executive branch agencies. OGE has employed a variety of methods for carrying out this function. The Office has established a system of training for ethics officials in the regional offices as well as in the Washington, D.C. headquarters offices of the agencies. From CY 1983 through CY 1987, OGE held over 90 one-day training courses for ethics officers in 14 cities, including the District of Columbia. In CY 1986 alone, OGE personnel conducted 92 separate training sessions at Executive Seminar Centers and various agencies, reaching over 3000 people, generally in management positions.

In 1983 and 1984, OGE held its fourth and fifth annual conferences. In 1985, the annual conference was replaced with a half-day seminar on the criminal conflict of interest statutes. A senior prosecutor from the Public Integrity Branch of the Criminal Division, Department of Justice, joined an OGE staff attorney in conducting the seminar in which they discussed the statutes from both the prosecutor's and the ethics counselor's viewpoints. Another seminar focusing on recurring problems with the public financial disclosure reports was held in 1986.

In May of 1984, OGE published its first issue of the Ethics Newsgram. Since then, OGE has published the Newsgram on a quarterly basis. It is designed to disseminate news and information about the executive branch's ethics program to the agencies' ethics officials.

In 1986, with the assistance of the President's Council on Integrity and Efficiency, OGE published "How to Keep Out of Trouble," a pamphlet which discusses the standards of conduct and conflict of interest statutes in layman's terms. Agencies may purchase the pamphlet from the Government Printing Office. Thousands of copies of the pamphlet have been distributed.

Another training device is OGE's 1987 videotape entitled "How to Complete the Executive Personnel Financial Disclosure Report." The tape features an enlargement of a completed SF 278 form with narration explaining each section. On January 31, 1988, OGE completed another videotape, entitled "Public Service, Public Trust." It reviews the conflict of interest laws and regulations applicable to executive branch employees through narrative and example.

From this discussion of the operations of OGE, I would like to turn to a brief discussion of my recommendations for changes in the Ethics in Government Act, which is one of the areas you asked me to address. In light of the upcoming transition, I believe a

technical amendment to the Ethics in Government Act would be helpful in resolving an issue that arose during the Carter-Reagan transition, and which still has not been resolved. This is the question of the date on which a prospective nominee's SF 278 becomes available to the public once any copy of it has been given to OGE and the agency in which the individual would serve.

The statute requires OGE and the agency to make an SF 278 public within 15 days after its receipt. The present solution is that the White House provides draft SF 278's to this Office and the agency. During this early phase of the nominee clearance process, an actual determination to go forward with a nomination has not been made. Indeed, the President may make a determination not to proceed with a nomination. Exposing an individual to public scrutiny prior to the President's actual decision would interfere with the President's appointment procedures and could cause unnecessary embarrassment and hardship, particularly for a candidate who ends up not being nominated. Only after actual nomination does the White House release to this Office the original SF 278. Assuming the new administration will conduct its own initial conflict of interest review of potential nominees and continue to request the SF 278's directly from those individuals, we foresee the process for handling the nomination/confirmation SF 278's will remain much the same. Therefore, a clarification of the public availability of the draft SF 278 forms would be of assistance.

Mr. Chairman, I would like to say that the questions you posed in preparation for this hearing were most appropriate. They have illuminated a partial history of this ten-year-old Office, which reveals a growth process from a very tentative and probing beginning. With the concern for public confidence in government, the role of this Office is a vital one. Incidents of conflicts of interest, proven or only alleged, are isolated and infrequent among the thousands who dedicate themselves to public service. This Office serves those thousands, and the public needs to know that they can have confidence in them. This is our major role.

I appreciate this opportunity to speak with you today. I will be happy to answer or provide answers to any questions you may have.

STATEMENT OF DAVID H. MARTIN
BEFORE THE SUBCOMMITTEE ON OVERSIGHT
OF GOVERNMENT MANAGEMENT

Thank you for the opportunity to present this statement to you this morning, Mr. Chairman.

First, I would like to comment on the importance of the Office of Government Ethics in the general regulatory scheme in the executive branch for ethics standards and enforcement. The executive branch ethics system is a decentralized one in which each agency head is responsible for the agency ethics program and a designated agency administers that program. The ethics office oversees the executive branch ethics system by setting general standards, providing training, counseling and interpretive advice, and maintaining a focus on ethical problems and concerns. Secondly, the ethics office plays a major role in raising the general level of ethical awareness in the country, by educating executive branch officers and employees and the general public alike in the conflicts of interest laws and the standards of conduct. In all of these roles I believe the ethics office does an outstanding job with its limited staff.

Particularly distressing to me, both while I was Director and now, is what I call the politicization of the ethics process in the government in general. That is, the tendency of fellow legislators, or executive branch officials or employees

to point fingers at others and prejudge conduct, claiming that one is unethical or has acted improperly when the facts are not fully known or when ethics is not really at issue. There is a general tendency to seize any opportunity to label the activity of a political adversary an ethical violation, even when ethics may not be involved. That has occurred repeatedly in the financial reporting area. Besides unfairly smearing character, this type of activity tends to undermine the effectiveness of the Office of Government Ethics, the positive influence that it provides, and the public's confidence in the integrity of its officials.

The Ethics in Government Act of 1978 was the first to require public financial disclosure. In the last ten years, many have questioned the wisdom of these provisions. I believe that financial disclosure works. Public financial disclosure has proven to be a valuable tool for individuals, filers and government officials alike in determining conflicts of interest by raising the ethical, moral and legal awareness of potential and apparent conflicts of interest which may arise in the course of public service. I strongly support financial reporting and know that this subcommittee agrees with my views in this arena. Having said that, it is my opinion that the present law requiring financial disclosure and the accompanying forms and instructions are too complicated and difficult. They are in serious need of simplification. My recommendations are

simple: raise the threshold for reporting all assets and income to a uniform \$1,000, and eliminate categories of reporting for assets, income and liabilities. The present public financial disclosure system requires so much detailed information that the review process is slow and careful reviews impractical. I believe that an informed determination of the existence of a financial conflict can be made from a simpler listing of assets, liabilities and other financial and professional relationships. If the determination of the existence of a conflict can not be fully made but questions are raised, the reviewing agency ethics official or the ethics office can inquire further, which is frequently the case. A more simplified filing procedure would simplify the review process, allowing more time and attention to those filers who have a conflicts problem. Secondly, too many people are required to report publicly. I do not believe that it serves public policy or practicality to have lower level employees report publicly. I would limit public reporting to presidential appointees requiring Senate confirmation, White House political appointees, certain Schedule C policymakers and career policymakers. I would eliminate public financial reporting for all other career employees. However, I would maintain confidential financial disclosure for all those who presently file.

I made agency education and training a high priority while I was Director of the Office of Government Ethics. This committee frequently was frustrated at many agencies due to a lack of commitment of agency manpower, the failure of training programs, and inadequate attention from agency heads and top management. There has to be some mechanism that will force agency administrators and heads to focus on their ethics programs. Some mandatory training for high-ranking officials may be necessary to do this, and I suggest to the committee that it consider some measure to authorize the Office of Government Ethics to initiate such a program. Perhaps a regular cabinet level briefing at the White House will bring the proper tone and focus into the agencies.

There should be a uniform rule for gift acceptance authority for all agencies or employees who are on official travel. At present, some agencies have it and others do not. Clearly, an individual should not be authorized to accept a gift or travel reimbursement directly; the rules for allowing an agency to accept it should carefully and clearly be set forth in regulations so that the donor of such a gift understands the rules as well as the agency.

Assuming that the post-employment laws are not changed by the present bills that are now in Congress, it is my recommendation that the senior employee designations be eliminated and that "senior employees" be established simply by an across-the-board salary designation.

Along the same lines, you should revisit the separate segregated component issue and determine whether or not that really makes any sense, not only in terms of the White House but in terms of other agencies. If you really believe that that law is designed to eliminate influence for one year, then it ought to be to the whole agency and not merely a separate component. A high ranking official's ability to influence cuts across lines of authority and separate offices within an agency. This occurs not only at the White House but in all agencies. Therefore, if you eliminate it for the White House, eliminate it for all agencies, and you would eliminate a lot of headaches and administrative and bureaucratic overhead.

In sum, the Office of Government Ethics operates quite efficiently with a small number of personnel. In my opinion, the office ought to be doubled in size and the desk system arrangement that was put in place during my administration ought to be continued so that agency officials know who within the Office of Government Ethics understands their particular agency problems. Finally, the Office of Government Ethics ought to be a separate and independent agency within the executive branch.

Thank you. I am prepared to answer any questions you may have regarding the ethics office.

35m.102.106.

STATEMENT OF JOSEPH D. SHINE
TO THE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

APRIL 13, 1986

Good morning. My name is Joseph D. Shine. I was formally the Designated Agency Ethics Official and the Special Counsel for Ethics for the United States General Services Administration (GSA). I am presently a Chief Deputy Attorney General for the State of South Carolina. I come before you at your invitation. My remarks are my personal views, and do not reflect any position taken by my past or present employers.

During the course of my discussions with you, I may say things that you may not want to hear. I do so, not to offend anyone, but because I care about our Federal Government.

I am interested in good Government. A strong, and viable national ethics program is the first defense against a moral decline in Government.

I have devoted most of my professional career to working in the public service. I want to play a role in creating a national structure that would help alleviate ethical lapses of our Federal officials. I am here out of a deep desire to have a Federal Government of integrity that we all can respect.

I thank you for this opportunity.

I. Relationship between OGE and DAEOS.

There is a major flaw in the fundamental relationship between the Office of Government Ethics (OGE) and Designated Agency Ethics Officials (DAEOs). OGE provides information to DAEOS, consults with DAEOS on agency-ethics programs, monitors agency compliance with ethics regulations, particularly with respect to public and confidential financial disclosure requirements, and evaluates the effectiveness of DAEOS' ethics programs. There is no explicit reporting relationship, like a chain of command, by which the DAEOS report to OGE. OGE may request information from DAEOS. There is an expectation of cooperation which exists between OGE and DAEOS. However, the DAEOS is appointed by the head of the agency in which he or she serves. The head of the agency is responsible under OGE regulation for the agency's ethics program. Therefore, the DAEOS is account-

able and responsible to the head of the agency. The DAEO is not independent. He or she is bound by the managerial direction and supervision of the head of the agency. Compensation, evaluation, tenure, and rewards for the DAEO come from the agency head.

If the head of the agency or his or her close advisors are involved in matters which constitute actual or apparent conflicts of interests, then the DAEO is in a difficult situation to act independently. OGE has no authority to protect the tenure of the DAEO in his position under this circumstance, or to insulate the DAEO from political pressure. This major weakness prevents the Federal Government from having a strong, independent and viable ethics program. The Director of OGE may intervene on behalf of the DAEO with the head of the agency, and use persuasion. The Director of OGE may use political influence or news media attention to effect some protection for the DAEO. All of these measures bring cold comfort to the DAEO who is on that lonely battleground protecting the public interest.

The DAEO is often required to provide interpretative guidance to agency employees using Federal statutes, case law, and regulations. There is no specific pre-qualification standard to be met by an individual who is to be appointed a DAEO. No specific requirement is stated that would have the prospective DAEO possess specific legal training, education, or experience. OGE only requires that the head of the agency ensure that the individual selected for DAEO have experience in administrative, legal, managerial or analytical work which demonstrates the ability to carry out certain enumerated responsibilities.

OGE has no uniform approach for institutionalizing the position of DAEO in terms of status, organizational support, and placement of the DAEO within the organizational hierarchy of an agency. OGE requires the agency head to make available to the ethics program sufficient resources (including investigative, audit, legal, and administrative staff as necessary) to enable the agency to administer its program in a positive and effective manner.

Query? Is any Director of OGE going to mandate or recommend to the head of a major Federal agency the amount of money that should be spent from an agency's budget for the ethics program even if present funding appears to be inadequate?

In closing out this issue, present regulation requires that the DAEO act as liaison with OGE. This circumstance creates a weak link to bind a national ethics program designed to protect the integrity of the Federal executive branch of government. Indeed, a stronger relationship

between OGE and the DAEOS is needed for an effective ethics program.

II. Independence of OGE.

OGE is not sufficiently independent to carry out its statutory duties as a part of the Office of Personnel Management. The mission of OGE, protecting the integrity of our Federal executive branch of government, is too important to be submerged in a larger bureaucracy. The Director of OGE should report and be accountable directly to the President of the United States.

Under its present status, personnel staffing decisions of OGE are reviewed and affected by upper management of the Office of Personnel Management. This process undercuts OGE's independence. The Director of OGE is often viewed as a subordinate official by heads and staff of other major Federal agencies. In my opinion, this perception affects the Director's ability to persuade agencies to adopt corrective action.

To ensure independent action by OGE, the creation of a separate independent ethics organization is required. This independent ethics organization can then operate more freely and effectively from the bounds and political constraints (being a team player) that are often imposed on an organizational component of a larger bureaucracy.

III. Sufficiency of five-year term for Director of Office of Government Ethics.

The five-year term for the Director of OGE is not adequate. The Director should be given a longer term of office, for example seven years, that could overlap any Presidential administration. We need an independent Ethics Director. We do not need a Director who is appointed to the position because he wants to serve a partisan Presidential administration. We do not need a Director who may become an apologist for members of a Presidential administration.

The Director of OGE should only be removed for cause. This is the essential ingredient that is presently missing. Without this provision, the Director of OGE continues to serve at the pleasure of the President. Notwithstanding the five-year term, the President can still request the resignation of the Director of OGE for any reason.

IV. Protection of DAEOS from political interference.

I have indicated that the position of DAEO is a vulnerable one. If you are a GM/GS attorney-advisor serving as

DAEO, you have no civil service tenure or protection. All GM/GS attorneys in the Federal government serve with excepted appointments. As an attorney, you may be removed, reassigned, or terminated without recourse to the Merit System Protection Board. Your job security does not have to be threatened directly, or indirectly. You realize if you displease the boss by taking strong actions, you may find yourself exiled to the Siberian gulag. What is left for the DAEO is to be fortified by his or her personal sense of ethics to do what is right.

Not everyone can afford to take a personal stand like several top officials recently at the Justice Department, and resign from his or her position as a matter of conscience and protest. Most agency ethics officials at the working level are career public servants. This Subcommittee has an obligation to propose legislation that would protect these servants of the public interests from reprisal, actual or implied. If we are to have a Federal government that has creditability, integrity, and the respect of the American people, then agency ethics officials and their staffs must be protected from the winds of political expediency.

Presently, OGE has no such statutory authority to insulate the DAEO from being replaced by the head of an agency. Statutory authority, not regulations that could be considered by some to be aspirational in nature, is needed to provide the necessary remedial relief.

The establishment of a permanent corp of DAEOs, removable only for cause, would go far to provide the needed independence of judgment and action. This independent corp of DAEOs would operate much like administrative law judges. The appointment, tenure, and evaluation of the DAEOs would be determined by the Director of OGE. The DAEOs should be members of the Senior Executive Service because sufficient status is required in their dealings with top level Federal Government officials, including heads of major Federal agencies.

V. OGE's agency compliance reviews.

Agency compliance reviews by OGE is limited by the paucity of staff resources. If you have more auditors, then you can do more. Having agency compliance reviews every three to four years is inadequate. When the reviews do take place, they are often helpful in pointing out program deficiencies that should be corrected.

The lack of a truly independent Director of OGE may affect the forcefulness of recommendations going to agency heads. The Director may not have statutory authority to enforce corrective actions against an agency. If the Direc-

tor of OGE does not have this authority, then agency compliance reviews may become mere paper exercises.

I have no independent basis for determining the scope and depth of agency compliance reviews performed by OGE at agencies other than GSA. However, OGE may want to examine more closely the actual operation of the screening systems that are employed to protect political appointees under recusal agreements against actual and apparent conflicts of interests. Physical examination of documents supporting the screening system including any listings of names of partners and business associates of the affected appointee is necessary. We must ensure that the screening procedures used in an individual case are effective. Often OGE will accept the assertions of the appointee, or the DAEO regarding the operation of the recusal system.

VI. OGE's ethics training program.

The content of OGE's ethics training is more than adequate. However, I would like to see more resources spent on developing generic video training films on ethics issues with appropriate guides and manuals. Greater emphasis should be placed on agencies to provide continuous ethics training.

All political appointees without regard to rank should attend a mandatory ethics briefing before their confirmation or appointment. This mandatory briefing should be sponsored by OGE. The ethics briefing should be a condition of employment. Once appointed, political appointees are often too busy carrying out the President's agenda to take time out for ethics briefings. Other priorities often take precedence.

VII. Recusal agreements.

If a recusal agreement is required for a political appointee, then OGE should require the appointee to agree to a specific written plan of action implementing the recusal agreement. Such matters as resources to be employed, the role of the DAEO in the screening process, and the nature of the information that will be made available to specific key management officials of the agency to avoid real or apparent conflicts of interests should be addressed. OGE should require the DAEO to provide a written plan for implementing the recusal agreement before the appointee is appointed or confirmed. There is very little leverage left with an appointee after he or she has taken the oath of office.

The Senatorial Committee considering any nomination should have available not only the recusal agreement but also the action plan of implementation. The agreement

among the Director of OGE, the DAEO, and the appointee on what is required to protect the appointee from actual or apparent conflicts should be reviewed by the appropriate Senatorial Committee at the time of the confirmation hearing.

VIII. Conclusion.

In concluding my remarks, I want to leave a message that I hope will be remembered from my appearance before this Subcommittee. The message is one that cries out for the Subcommittee to recognize the need to protect the independence of judgment and actions of DAEOs.

I leave with you a hypothetical problem--

A certain Presidential nominee is required to execute a recusal agreement before he is confirmed in his position as head of a major Federal agency. This recusal agreement is signed and presented to the Senatorial Committee considering his nomination. The nominee is approved and is confirmed by the United States Senate. The action plan that is proposed by the DAEO to the head of the agency for implementing his recusal agreement is rejected. An alternative action plan is provided by the agency head with the approval of White House Counsel. This alternative action plan is given to the DAEO for review. The alternative action plan on its face appears to be adequate and valid, but it minimizes the role of the DAEO in the screening process used to protect the agency head from actual or apparent conflicts of interests. The primary person responsible under the alternative plan for screening all particular matters coming to the head of the agency is a close personal associate of the agency head appointed by the agency head to perform the screening duties.

What should the DAEO do?

How independent is the DAEO in this circumstance?

Is the choice of the action plan for implementing the recusal agreement a policy decision?

If so, who should make this policy decision for the agency?

The agency head is responsible for the agency's ethics program under OGE regulation. The DAEO is expected to present the agency's position, not his personal view, when communicating with OGE on this matter. This hypothetical problem illustrates the lack of independence of the DAEO.

If one concludes upon looking at these proceedings that the reality of politics has little room for ethics, I leave you with a parting thought from Rousseau (1876), "Those who would treat politics and morality apart will never understand the one or the other."

Thank you for your kind attention. I am prepared to respond to your questions.

STATEMENT OF

**KATHLEEN A. BUCK
GENERAL COUNSEL
DEPARTMENT OF DEFENSE**

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

ON THE REAUTHORIZATION OF

THE OFFICE OF GOVERNMENT ETHICS

APRIL 13, 1988

I appreciate the opportunity you have given me today to express the views of the Department of Defense (DoD) regarding the reauthorization of the Office of Government Ethics (OGE).

As the largest of the Executive Departments with three million civilian and military members, the Department of Defense has a continuing interest in the vigorous enforcement of Standards of Conduct. Our long experience in this area has produced detailed directives and aggressive education programs within the Department. While no program of enforcement and education can be expected to prevent every violation of statute or regulation, we are proud of our record. In achieving our present posture and looking toward future improvements, we have come to realize that, in large part, the Office of Government Ethics has provided us the guidance and assistance necessary to achieve our goals. In only eight years, OGE has become an essential element in the maintenance and strengthening of Standards of Conduct in the government.

I will address the issues you identified in your March 25, 1988 invitation letter. First, I will consider the relationship between the Office of Government Ethics and Designated Agency Ethics Officials (DEAOs). Naturally, DoD and OGE have not always found themselves in complete agreement, but we feel that OGE has established effective channels for meaningful dialogue and resolution of disagreements.

Most important, our agencies share the common goal of maintaining the highest standards of conduct, and thus our differences have concerned only the means, not the ends. Our strong relationship with OGE results from the ready accessibility of OGE Chief Counsel Gary Davis and his staff to the lawyers in our Standards of Conduct Office and numerous other DoD legal offices. I have rarely found it necessary to become personally involved in discussing OGE opinions and decisions. This has been handled, as it should be, by direct contact between OGE and DoD staffs.

Second, we believe that OGE's statutory authority has proven adequate in practice. OGE has taken a vigorous approach to maintaining the overall direction of Executive Branch policies, developing consistent interpretations and seeking to prevent conflicts of interest. Each Executive Branch department is responsible for enforcement of its own Standards of Conduct regulations and OGE has properly fulfilled its charter by providing the guidance necessary to assist the departments in this effort. They have not been content simply to publish regulations and let them sit there. They have always made that important follow-up effort to keep us educated and to ensure that government ethics are viewed as important matters - not a group of amorphous regulations designed solely to hinder government operations.

Judge Frank Q. Nebeker brings to OGE not only an extensive background in government, but also a firm commitment to professional education. We expect that his dedication and leadership will enhance

OGE's efforts to insure that adherence to Standards of Conduct continues to be an integral part of government operations.

Third, you asked if Designated Agency Ethics Officials were sufficiently protected from political interference. I am not aware of any problem of that nature within the Department of Defense. Secretary of Defense Weinberger staunchly supported the decisions of Agency Ethics Officials, a tradition followed by the current Secretary, Mr. Carlucci.

In addition to the examples set by the Heads of this Department, there are several other reasons why political influence has not been a problem for DAEOs in DoD. Those chosen to serve in Ethics positions are persons of experience and maturity, individuals not likely to be improperly influenced by political considerations. The Standards of Conduct regulations of all of the components of the Defense Department support the role of strong, independent, DAEOs. Finally, any ethics official may seek guidance from the next level of authority or from the Office of Government Ethics. Such referral permits the DAEO to be removed from any local pressure which might influence him or her to give the expedient rather than the correct advice.

Ultimately, OGE serves as the "lightning rod" for the DAEOs of each of the Departments. Although I have not personally found a need to use OGE's good offices in this respect, the very existence of OGE

strengthens our DAEOS in their work and helps prevent problems of political influence from arising.

Fourth, I will address your question about OGE's agency compliance reviews. This is an area where we have found OGE to be a nuisance, but perhaps the kind of nuisance we need. The individuals that have been assigned from OGE to review our records have had an in-depth knowledge of financial reporting systems and administrative management techniques. They have found flaws in our procedures and have been effective in asking those questions that sometimes have less-than-satisfactory answers. In other words, these audits accomplish exactly what they should accomplish: the auditors identify areas that need improvement and provide guidance to accomplish necessary changes.

As these auditors have worked in the various components in the Defense Department they have identified good ideas that should be shared and areas of confusion where DoD guidance may be improved. Because my Office is the focal point of Standards of Conduct policy in the Department of Defense, we have found this information enormously helpful. I am not aware of any additional subjects that should be covered by the OGE audits. I have no doubt that the OGE representatives would be willing to broaden the scope of any inquiry if contacted at the outset of an audit visit.

Finally, there is the subject of training. We are fortunate in this Department to have a number of individuals in key ethics positions who have had long years of experience in the program. One of the attorneys in my office, for example, assisted in the establishment of the Office of Government Ethics in 1979. With this reservoir of experience, we certainly have the capacity to train our own people. We also want our training to be closely tailored to the needs of the individuals and the unique characteristics of the Department of Defense. We can hardly expect that kind of individualized attention from OGE. For example, a member of my staff briefs each new political appointee in the Office of the Secretary of Defense. He relates the briefing directly to the new official's duties. Accordingly, I see no need for increased OGE involvement in the area of training individual employees.

In the case of continuing education for our DAEO's, however, OGE fulfills a very important role. The conferences hosted by OGE in past years have proven very valuable. Not only have the formal sessions been very productive but the interchange among the participants themselves has promoted understanding. We favor the re-institution of these OGE conferences. The occasional gatherings of Designated Ethics Officials that are held by Judge Nebeker also are valuable.

In closing, I would like to emphasize that the Department of Defense wholeheartedly supports the reauthorization of the Office of Government Ethics. OGE has helped to create an environment in which

adherence to Standards of Conduct occupies its rightful place in the hierarchy of concerns for government employees. OGE has provided clear guidance in its directives and opinions and has actively sought to keep the workforce informed and educated. Under the leadership of Judge Nebeker we feel confident that OGE will continue its outstanding record of service to the departments of Executive Branch.

GAO

Testimony

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Issues Related To The Office of Government Ethics

Statement of
Rosslyn S. Kleeman
Senior Associate Director
General Government Division

Before the
Subcommittee on Oversight of Government
Management
Committee on Governmental Affairs
United States Senate



ISSUES RELATED TO THE
OFFICE OF GOVERNMENT ETHICS

Summary of Statement by
Rosslyn S. Kleeman
Senior Associate Director
General Government Division

Maintaining the highest ethical standards among elected officials and career civil servants is an important element of a vital public service. Toward that end, GAO identified areas requiring attention by the Office of Government Ethics (OGE) and possibly by Congress.

Most ethics laws now limit the penalties for conflicts of interest to criminal sanctions, notwithstanding the severity of the offense but the prevailing view among those administering the laws is that a range of penalties, including civil penalties, is more appropriate. We agree.

OGE needs to assess the adequacy of existing regulations and to issue regulations governing confidential financial reporting among federal employees at GS-15 and below.

Agency ethics officials say OGE has done a credible job in several areas, such as serving as an advisor and educator as well as helping to solve potential conflicts of interest and systemic problems in agency programs. OGE has not always been able to review, as quickly as required, individuals' financial disclosure forms and agencies' ethics programs. Also, OGE's training and consulting services are well received, in strong demand, but in short supply. OGE attributes these conditions largely to limited staff size--27 people in total.

The upcoming Presidential transition will likely strain even further OGE's ability to review disclosure forms, provide advice, and the like, while also continuing its regular oversight and advisory programs.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to participate in this hearing on the Office of Government Ethics' (OGE) reauthorization beyond September 30, 1988, and to highlight the results of our review of OGE's operations for this hearing.

My comments will focus on questions surrounding the appropriate role for OGE and whether OGE's current activities are consistent with those envisioned in the Ethics in Government Act of 1978. I will also discuss specific areas of concern we identified which were confirmed by designated agency ethics officials, past OGE directors, and others.

We interviewed designated agency ethics officials or their representatives in 14 agencies (a mix of cabinet level departments and smaller agencies), all 4 past directors of OGE, and current OGE officials. We analyzed the Ethics Act, its legislative history, and implementing regulations to identify areas possibly warranting the Subcommittee's attention in connection with the reauthorization.

We continue to believe the creation of OGE was an important achievement. It should be reauthorized. If Americans are to have confidence in the integrity of the federal government, the prevention of conflicts of interest among federal employees must

be assured. OGE directs conflict of interest policies applicable to almost 3 million federal workers, and has made progress in providing the guidance, training, and oversight necessary to promote ethical conduct in the federal system. Its leadership is critical, especially in view of the need to reassure the American public that the conduct of elected and career public servants is being watched.

Nonetheless, several issues related to OGE and the government's ethics system in general need attention: (1) the adequacy of existing ethics regulations needs to be assessed, (2) OGE has not met its goal of reviewing agency ethics programs every 3 years, and (3) ethics training for high-level executive branch employees is also a concern. The agencies continued cooperation with OGE will help the Office carry out its oversight functions.

DEVELOPING RULES AND REGULATIONS

OGE has amended regulations on standards of conduct (5 CFR 735) issued by the former Civil Service Commission. It has also issued regulations relating to executive branch financial disclosure requirements (5 CFR 734), post employment conflict of interest (5 CFR 737), and its own operations (5 CFR 738).

Generally, the agency ethics officials in the 14 agencies we interviewed believe the ethics regulations are helpful but several also feel the regulations can be improved. They believe the regulations in general need to be clarified and should include more examples, and older regulations should be reviewed and updated. We agree.

Implementing regulations currently exist for only one conflict of interest statute (18 U.S.C. 207) which imposes certain restrictions on the activities of former federal employees. As we reported in June 1987, (Ethics Enforcement: Process by Which Conflict of Interest Allegations Are Investigated and Resolved, GAO/GGD-87-83BR), several agency officials, including two Inspectors General, said regulations are also needed for the conflict of interest statutes involving current employees, particularly 18 U.S.C. 208 which prohibits current employees from participating in matters in which they have a financial interest. They believe that regulatory definition of key terms would help in identifying prohibited conduct. Several of the agency ethics officials we interviewed also believe there should be regulations for all conflict of interest statutes (18 U.S.C. 202-209).

OGE believes the best way to define key terms used in the conflict of interest statutes is through amendments to the statutes. Further, OGE believes that until legislative changes are made to the conflict of interest statutes, they can best

serve agency ethics officials by providing interpretative guidance such as advisory opinions, memoranda, and newsletters.

OGE began an evaluation of the standard of conduct regulations (5 CFR 735) in late 1986 because OGE believed the regulations needed improving, but the evaluation was discontinued in early 1987 because of OGE's higher priority needs. Given its limited staff, OGE may find it difficult to improve existing regulations, not to mention developing and issuing new ones.

EVALUATING ETHICS LAWS

Most agency ethics officials we interviewed said the conflict of interest laws should be revised to clarify imprecise language and provide definitions. For example, they specifically identified the term "particular matter" used in 18 U.S.C. 207 and 208 as needing clarification. Under 18 U.S.C. 207, a "particular matter involving a specific party or parties" with respect to which a former employee must avoid representational activity excludes policy determinations. However, a "particular matter" as used in 18 U.S.C. 208, which disqualifies employees from acting in matters affecting a personal financial interest, includes policy determinations.

OGE has not recommended amendments to the Attorney General to address the language of the conflict of interest laws. Rather,

OGE believes that it has provided ethics officials and others appropriate guidance to deal with any ambiguities through its process of consulting and cooperating with Justice.

Also, most agency ethics officials we interviewed believe the conflict of interest laws should provide for civil penalties in addition to criminal penalties. Similarly, Department of Justice officials told us the conflict of interest statutes should be amended to augment existing felony penalties with lesser criminal and civil penalties. These officials described the difficulty of prosecuting conflict of interest cases as felonies, and both Justice and agency ethics officials have said additional penalties could facilitate enforcement of conflict of interest laws. OGE officials agreed. And we agree.

REVIEWING PUBLIC FINANCIAL

DISCLOSURE REPORTS

OGE reviews certain public financial disclosure reports including those filed by all designated agency ethics officials and Senate-confirmed presidential appointees, high-level White House officials, and the President and Vice President. Other executives' reports are reviewed by ethics officials at the agencies or by the Secretaries concerned for members of the uniformed services.

As required by the Ethics Act, OGE must review financial disclosure reports within 60 days after they are transmitted to OGE. An OGE study completed last summer showed 9 out of every 10 reports were not approved within 60 days. OGE officials said this situation occurred because in the past its review staff was also responsible for examining agencies' ethics programs. In November 1987, OGE dedicated a group to perform reviews of agency ethics programs and another group to review financial disclosure reports. OGE has not had enough experience with this new arrangement for us to determine whether OGE's overall timeliness has improved.

OGE is charged with administering the confidential (non-public) financial disclosure system, which applies for the most part to employees at or below the GS-15 level in positions involving significant discretionary authority. Confidential reporting requirements were originally established by executive order in May 1965. In 1980, Justice decided the Ethics Act superseded the earlier executive order, thus removing the legal basis for requiring confidential financial disclosure reports. However, according to OGE, all agencies except the Justice Department, have continued to use the confidential reporting systems they had in place before Justice's decision.

On the basis of legislation enacted in December 1985, the President issued an executive order in September 1986 authorizing

OGE to develop regulations for a comprehensive system of confidential financial reporting for officers and employees of the executive branch. In December 1986, OGE proposed regulations to establish such a system. OGE is processing comments it received on the proposed regulations and as of April 1, 1988, has no estimate as to when the confidential financial disclosure regulations will be issued.

INTERPRETING RULES AND REGULATIONS

When requested, OGE consults with agency ethics counselors and other officials about conflict of interest problems. In this role, OGE provides extensive advisory services through meetings with agency representatives and a telephone consulting service. More than half of the agency ethics officials we interviewed said they consult OGE on ethics matters "often" or "very often". Almost all of those using the service said OGE's consultation was helpful. Former OGE directors said that OGE's consulting services are necessary and vital.

As required by the Ethics Act, OGE established a formal advisory opinion service. OGE also issues informal advisory opinions. Most of the ethics officials we interviewed said it would be helpful if OGE compiled, indexed, and sent all of its opinions to the agencies. OGE officials said they plan to have an indexed publication of opinions available in the next 2 to 3 months.

Through its decentralized training program, OGE trains agency ethics officials and assists them in developing ethics training programs for their agencies. According to OGE, it also provided about 50 1-day training sessions in regions over the last 4 calendar years, attended by an average of 50 ethics officials and career employees at each session. It also provided training at various agencies in Washington, D.C., and the Executive Seminar Centers at Oak Ridge, Tennessee, and Kings Point, New York. Attendance for 1986 and the first 7 months of 1987 totaled approximately 5,000 persons.

Both this Committee and the House Committee on the Judiciary, when considering the 1983 OGE reauthorization, noted a growing concern that high level officials were not familiar with the conflict of interest laws. OGE still sees the need for training of high-level officials to be a problem. OGE sends a letter to all new presidential appointees informing them of their responsibility to become familiar with ethics laws and regulations. OGE also participates in sessions at the Federal Executive Institute where they can reach some, but not necessarily all, high-level officials. OGE attempted to develop a training session to inform new presidential appointees of their ethics responsibilities. A former OGE director told us that the White House needs to stress the importance of ethics training by

commanding the attendance of Deputy and Assistant Secretaries at such training.

OGE officials have seen an increasing demand for ethics training in the past 5 years. Almost one-third of the agency ethics officials with whom we spoke said OGE should provide more training. Also, the presidential transition can be expected to increase the demand for ethics training.

MONITORING COMPLIANCE

OGE reviews agencies' financial disclosure systems and other aspects of their ethics programs to identify programmatic deficiencies. It then works with the agencies to resolve problems.

OGE's reviews cover a wide range of ethics-related activities. To resolve any problems noted, OGE prefers to advise and assist the agencies and to avoid adversarial relationships. Most agency ethics officials said OGE reviews are useful, and an OGE official said the agencies are generally cooperative in complying with OGE recommendations.

OGE's reviews take from 2 to 4 weeks at an agency, and its goal is to review each agency's program once every 3 years. However, OGE has not achieved this goal. OGE has reviewed larger

agencies' systems about once every 4 years and smaller agencies' systems about once every 5 years. An OGE official said the agency does not have enough staff to do the reviews more often. Two former OGE directors said that even triennial reviews are not frequent enough.

To strengthen its monitoring, OGE has, among other steps, asked agency ethics officials to inform OGE when they refer cases to the Justice Department. Also, OGE asked some Inspectors General to voluntarily report to OGE any investigations of employees at or above the GS-15 level resulting in referrals to Justice or in administrative action. OGE is developing a form which agencies will be required to file annually to report such information as the number of cases referred to and declined by Justice and the number and types of administrative actions taken by agencies.

The Ethics Act does not charge OGE with responsibility for enforcing the criminal conflict of interest laws or administering agencies' standards of conduct in individual cases.

Responsibility for enforcement of the conflict of interest laws is vested in the Department of Justice, and each agency administers its own standards of conduct. When OGE becomes aware of a potential conflict of interest, it works with the individual to resolve the problem and believes that it can be most effective in a consulting role. OGE believes this consultative approach encourages individuals filing disclosure forms and ethics

officials to come forward with their questions and concerns so they can be resolved before legal violations occur.

OGE does identify ethics problems in its reviews of individual financial disclosure reports and agencies' programs, and in other ways. When it does, the OGE Director can order corrective action, issue a public statement, refuse to sign an individual's financial disclosure statement, and/or refer the case to Justice.

Although the Ethics in Government Act gave OGE the authority to order corrective action, it does not define the corrective actions OGE may take. OGE considers corrective action to include measures such as requiring an official's recusal from a specific matter, divestiture of a financial interest, and establishment of a blind trust.

Although the Ethics Act empowers OGE to order an individual to take specific action to avoid a conflict of interest, OGE has no authority to enforce its orders. If an individual refuses to comply with an OGE order, OGE's recourse is to report the matter to the agency head, or other authority responsible for the individual's appointment, or to refer it to Justice.

The act requires OGE to refer to the Attorney General the name of any individual OGE believes has willfully falsified or failed to

file required financial disclosure information. OGE has referred such cases to Justice.

OGE is not a law enforcement agency. Without fundamental changes in the Ethics Act and a larger and different type of OGE staff, it is probably not feasible for OGE to have an enforcement function. All former OGE Directors agreed that OGE should not perform an enforcement function. Justice officials also believe the agencies properly have first-line responsibility for enforcing conflict of interest laws and disciplining individual employees. They see OGE's role as one of facilitating an understanding among executive branch officials about what the laws require.

PLANNING FOR THE PRESIDENTIAL TRANSITION

Finally, it is clear from past experience that the upcoming presidential transition will place more demands on OGE's limited resources. OGE works closely with the White House consulting on nominees and potential nominees. OGE also anticipates the transition will increase the number of contacts from the agencies and from officials new to federal service.

OGE assigns a high priority to the review of nominees' financial disclosure reports. Because the time required for the reviews depends on the size and nature of the individuals' holdings, OGE

cannot predict how much time will be required and how such reviews will impact its other work. In the last transition, OGE discontinued reviews of agency ethics programs for about 6 months because staff normally doing this work were assigned to review disclosure reports. OGE is exploring approaches to deal with the increased transition workload, including working with OPM to get 2 or 3 agency ethics personnel detailed to OGE.

CONCLUSION

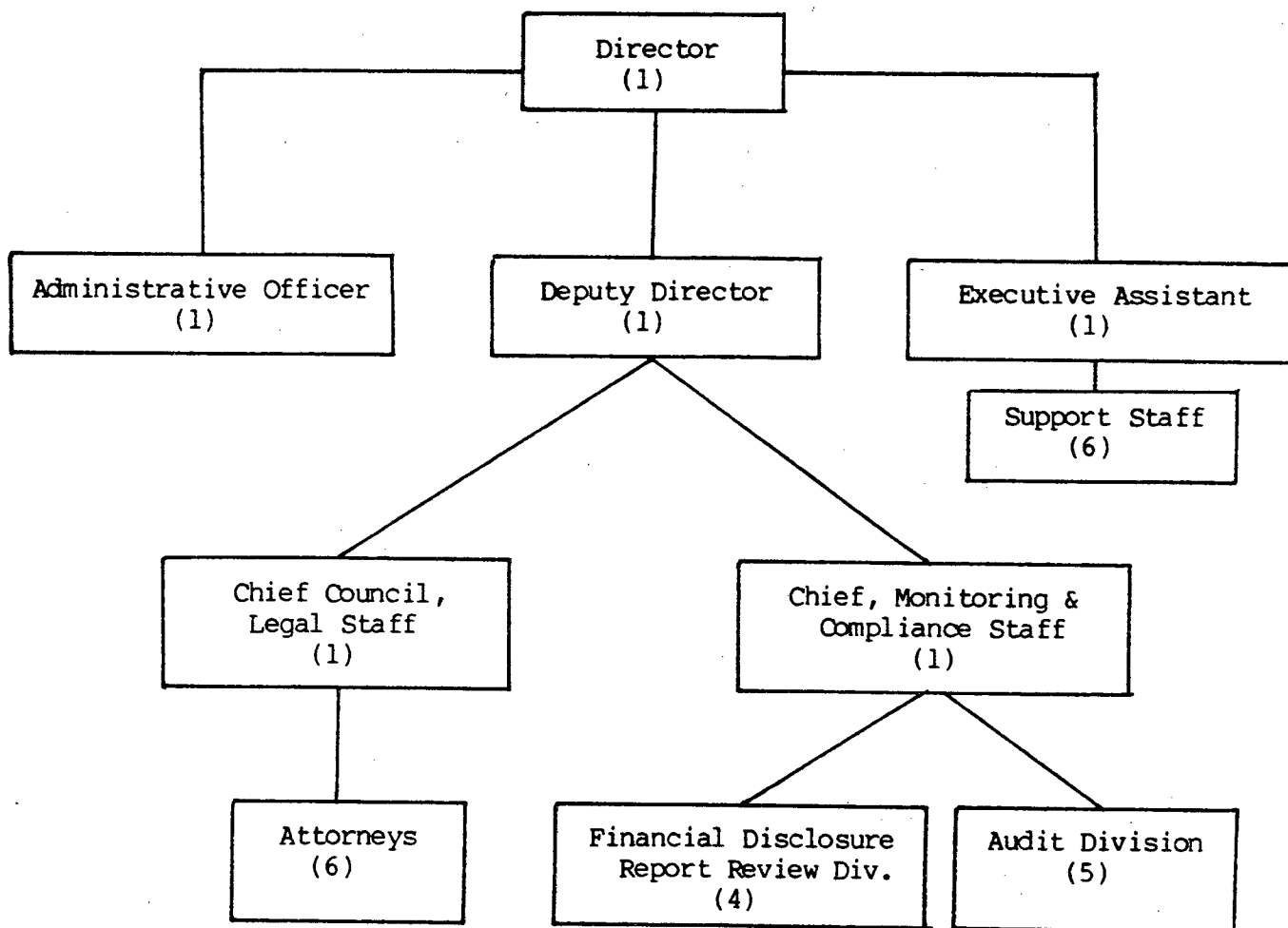
In summary, maintaining public confidence in the integrity of federal officials and employees is of critical importance. I would emphasize the importance of an ongoing program that focuses on preventing conflicts of interest on the part of federal employees through clearer standards, effective training, and strong enforcement. Generally, we and others we talked with believe OGE is doing a good job of carrying out its responsibilities in these areas, given its limited resources. OGE appears to have made an earnest attempt to address problems and issues in areas needing attention, as we have pointed out.

That concludes my prepared statement, Mr. Chairman. I would be happy to answer any questions you may have.

ATTACHMENT I

ATTACHMENT I

Organization Chart for the
Office of Government Ethics
(Number of Staff as of April 1, 1988)



ATTACHMENT II

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LAWS AND REGULATIONS REGARDING
CONFLICT OF INTEREST

The Ethics in Government Act of 1978 was enacted as Public Law 95-521 on October 26, 1978. Titles I, II, and III established public financial disclosure requirements for officials in the legislative, executive, and judicial branches of the Government. Title IV established the Office of Government Ethics (OGE) to provide overall direction on policies concerned with preventing conflicts of interest by officers and employees of executive branch agencies. Title V amended the criminal conflict of interest statute (18 U.S.C. 207), which restricts certain postemployment activities of former officials and employees of the executive branch, independent agencies of the United States, and the District of Columbia. Title VI provided the authority and established procedures for appointing special prosecutors (now independent counsels) to investigate and prosecute certain executive branch officials (or officials of a national presidential campaign committee) who may have violated federal criminal law. Title VII established an Office of Senate Legal Counsel to represent the Senate, its committees and subcommittees and individual senators and staff in certain proceedings before the courts. It also conferred jurisdiction on the courts to enforce Senate issued subpoenas.

The Ethics Act has been amended five times as follows

- Public Law 96-19 (June 13, 1979) amended certain financial disclosure provisions in the Act,
- Public Law 96-28 (June 22, 1979) made substantial changes in the provisions of title V which restrict former government officials from representing others in certain matters before

ATTACHMENT II

ATTACHMENT II

the agencies in which they served,

- Public Law 97-409 (January 3, 1983) amended the independent counsel provisions of title VI and extended this title for 5 years,
- Public Law 98-150 (November 11, 1983) extended the authorization of OGE until September 30, 1988, amended and clarified provisions concerning OGE's authority, and amended certain financial disclosure provisions, and
- Public Law 99-190 (December 19, 1985) amended section 207 to give the President authority to create a new confidential financial disclosure system.

The criminal conflict of interest statutes contained in 18 U.S.C. 202 through 209 which are applicable to federal officials and employees are, in brief

- 18 U.S.C. §202, which provides definitions;
- 18 U.S.C. §203, which (otherwise than as provided by law for the proper discharge of official duties) prohibits the payments to or receipt of compensation for representational services rendered by officers, employees, members of Congress, and others in relation to contracts or other matters involving the government;
- 18 U.S.C. §204, which prohibits members of Congress from practicing in certain federal courts;
- 18 U.S.C. §205, which prohibits officers and employees from representing other parties in contracts or other matters involving the Government;

ATTACHMENT II

ATTACHMENT II

- 18 U.S.C. §206, which exempts retired officers of the uniformed services and certain other persons from sections 203 and 205;
- 18 U.S.C. §207, which restricts post-employment representational activities;
- 18 U.S.C. §208, which prohibits officers and employees from participating in matters which affect a personal financial interest; and
- 18 U.S.C. §209, which prohibits a government employee from receiving any supplementation of salary from an outside source.

In addition to these governmentwide statutes, there are statutes which establish specific requirements or responsibilities applicable to employees of particular agencies. Regulations and guidance which relate to the ethical conduct of federal employees include: Executive Order 11222 and its implementing regulations, contained in 5 C.F.R. Part 735, which prescribe standards of ethical conduct for employees of executive departments and independent agencies; Executive Order 12565 which gives OGE responsibility for developing regulations for a confidential financial disclosure system; opinions issued by OGE and the Justice Department; rules of the House and Senate governing conduct of Members; and the various codes of conduct in the judicial branch.